IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7852 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ASSISTANT AGRICULTURE DIRECTOR - Petitioner(s)

Versus

NANDABHAI DHAYABHAI - Respondent(s)

==========

Appearance :

GOVERNMENT PLEADER for Petitioner(s) : 1,
MRS DT SHAH for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/11/2005

ORAL JUDGMENT

1. By way of this petition, the petitioner has challenged the award dated 02.12.2000 passed by the Labour Court, Surendranagar in reference (LCS) No.120/93 whereby the Labour Court directed the petitioner to

reinstate the respondent on her original post from 01.01.93 with 20% backwages.

2. The brief facts of the case are that the respondent was engaged as Rojamdar and he was performing the duties of a casual labourer. On 01.01.1993, he was discharged from service without taking into consideration the seniority list. Moreover, new recruitments were made in his place. The respondent served the petitioner with demand notice on 11.01.1993 which was not acted upon. Being aggrieved by this, the respondent raised an industrial dispute which was then referred to the Labour Court for adjudication whereby the aforesaid award was passed.

3. Mr Pandya, learned advocate for the petitioner contended that the respondent had voluntarily left service and has not reported since 01.01.93. While considering this contention in para 8 of the judgement the Labour Court has found that no seniority list was maintained for daily wagers. He further contended that the Labour Court has therefore committed breach of Section 25(G) and (H). he has further contended that in view of the 1998 circular, the respondent was relieved.

Hence, the order of the Labour Court is required to be interfered.

4. After going through the facts and circumstances of the case and after having heard the counsels for the parties, I am in complete agreement with the reasonings adopted and the findings arrived at by the Labour Court. Moreover, regarding the 1998 circular contention, I am of the opinion that retrenchment was in the year 1993 whereas this circular is of 1998. In that view of the matter, this contention was not raised before the Labour Court. As a result, this contention is not allowed at this stage. However, in case of closure, it will be open for the petitioner to absolve the respondent at any other place of the same department. The Labour Court has considered the evidence on record in detail and has come to the conclusion that the respondent workman is required to be reinstated. Therefore, in my opinion, the order of reinstatement is not required to be interfered.

5. However, from the award it appears that the Labour Court has granted backwages without giving any cogent and valid reasons. Backwages were granted merely on assumption without any concrete finding. As a result, I am of the opinion that the order of backwages is required

to be quashed and set aside.

6. Moreover, the law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> “10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V.

Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle “no work no 'ay” as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12.The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. In the premises aforesaid, the award granting backwages is quashed and set aside. The award of reinstatement with continuity of service is confirmed. The order of the Labour Court is modified to the above extent. Rule is made absolute accordingly with no order as to costs.

(K.S. JHAVERI, J.)

Divya//